

- EXHIBIT 2 -

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

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ABANTE ROOTER AND
PLUMBING, INC., MARK HANKINS
and PHILIP J. CHARVAT,
individually and on behalf of
all others similarly situated,
Plaintiffs,

vs.

Case No. 4:15-cv-06314-YGR

ALARM.COM INCORPORATED and
ALARM.COM HOLDINGS, INC.,

Defendants.

* * * * *

DEPOSITION OF ANYA VERKHOVSKAYA
A PORTION OF THIS TRANSCRIPT HAS BEEN DEEMED CONFIDENTIAL
TAKEN AT: VERITEXT LEGAL SOLUTIONS
LOCATED AT: 316 N. Milwaukee Street, Suite 575
Milwaukee, Wisconsin
March 6, 2018
8:58 a.m. to 12:00 p.m.

REPORTED BY PATRICIA C. SCHUMACHER, R.P.R.

* * * * *

Job No. 2822930

1 month.

2 Q And at that point what was your assignment when you
3 were first retained?

4 A I was assigned to review call records, identify
5 connected calls, identify outbound calls and identify
6 two calls within a 12-month period 30 days after it
7 were on the National Do Not Call Registry.

8 In addition, I was asked to describe a few
9 other services and could be some other details that
10 I outline in my original report that I may not
11 recall at this time.

12 Q You mentioned one of the things that you were asked to
13 do was to identify connected calls.

14 Can you tell us what connected calls are?

15 A Correct. Connected calls for the purposes of my first
16 report were defined as calls that were greater than
17 zero seconds and/or had a connected disposition.

18 Q What do you mean by "a connected disposition"?

19 A A disposition in the call records that indicated that
20 the call was connected.

21 Q Do you know what call records you were given to review?
22 Do you know where they came from?

23 A They were provided to me by plaintiffs' counsel.

24 Q And do you know what the volume of those was when you
25 were first retained?

1 A I believe it is outlined in my first report.

2 Q Do you know what the course of those records was
3 beyond -- You say you got them from plaintiffs'
4 counsel. Do you know where plaintiffs' counsel got
5 them?

6 A It was -- My understanding, it was produced to them in
7 the course of this litigation.

8 Q Did they tell you who produced them?

9 A I don't believe so.

10 Q I'm going to ask you to look at a document that's been
11 marked as Verkhovskaya Exhibit No. 1, please.

12 A I'm getting my glasses.

13 Q Can you identify Exhibit 1, Ms. Verkhovskaya?

14 A It is Responses and Objections of Plaintiffs and Anya
15 Verkhovskaya to Subpoena to Produce Documents.

16 Q Have you seen this document before?

17 A Yes, I have.

18 Q In what connection have you seen it?

19 A In providing objections to Subpoena to Produce
20 Documents for this deposition.

21 Q Did you review this document for accuracy?

22 A Yes, I did.

23 Q If I could direct your attention to the second page of
24 the document, the first request for production, there's
25 a statement there of -- in response to request for

1 A Is it one of the consent files?

2 Q If you'd like to take a break.

3 (A recess was taken.)

4 BY MR. SCHLESSINGER:

5 Q Ms. Verkhovskaya, we had a little bit of off-the-record
6 discussion, but can you tell us, if you can, what
7 Verkhovskaya deposition Exhibit 7 is?

8 A It's one of the audit files that people can subscribe
9 to to receive audit information on ported numbers, but
10 it's not something I used for this case.

11 Q Do you know whose work product this is?

12 A No.

13 Q It's not something that you produced though?

14 A No.

15 (Exhibit 8 marked.)

16 BY MR. SCHLESSINGER:

17 Q Ms. Verkhovskaya, you have in front of you a
18 document -- and this is the first page of a multipage
19 document, but it's Verkhovskaya Exhibit No. 8.

20 Can you identify what that is?

21 A It looks like one of the call records in this case.

22 Q There's a reference to Alliance in the upper left-hand
23 corner.

24 Do you know who Alliance is?

25 A A set of files that I reviewed were named as Alliance

1 as a part of the file name.

2 Q Do you know what that signifies?

3 A I do not.

4 Q Do you know who made the calls that are reflected on
5 this call record?

6 A I do not.

7 Q You don't know the individuals, but you also don't know
8 the entities that were actually making these phone
9 calls?

10 A I don't recall this information right now.

11 Q Do you know who the defendants are in this case?

12 A Alarm.com.

13 Q Do you know if anyone employed by Alarm.com made any of
14 the calls that are at issue in this case?

15 A I don't have an opinion on that.

16 Q Do you know the content of any of the calls that were
17 made that are at issue in this case?

18 A I do not.

19 Q Do you know what business Alarm.com is in?

20 A Alarm business.

21 Q Do you know any more specifically than that?

22 A No.

23 Q Does it matter to your conclusions what the content of
24 the call was?

25 A No.

1 Q Does it have to have been a call that was trying to
2 sell something?

3 MR. DONOVAN: Object to the form.

4 THE WITNESS: I don't have an opinion on this
5 matter.

6 BY MR. SCHLESSINGER:

7 Q Does it have to have been a call that mentioned
8 Alarm.com?

9 MR. DONOVAN: Object to the form.

10 THE WITNESS: I don't have an opinion on this
11 matter.

12 BY MR. SCHLESSINGER:

13 Q Do you know if there are fields missing from the
14 copies -- the copy of Exhibit 8 that's in front of you?

15 A I don't believe the fields are missing. The call date
16 is not expanded.

17 Q If it were expanded, there would actually be a date
18 there rather than just those number signs?

19 A Correct.

20 Q I guess those are hashmarks.

21 In your cleanup work to prepare these call
22 records for further analysis, were there some phone
23 numbers listed that were not ten-digit phone
24 numbers?

25 A I don't recall at this time.

1 It's been marked as Verkhovskaya deposition Exhibit 11.
2 Again, that has the initials VMS up in the top
3 left-hand corner.

4 Are these more -- Does this document
5 represent more call records?

6 A Correct.

7 Q The first column there has four numbers. The first
8 one -- The first row it's "4429."

9 Do you know what that represents?

10 A No, I do not.

11 Q And then going down roughly ten or 12 rows, the first
12 entry under the "disposition" column, it says "no
13 answer."

14 Do you see that has a duration of what
15 looks like 11 seconds?

16 A Yes, I do.

17 Q And would a call that says "no answer" with a duration
18 of 11 seconds, would that be included in your analysis
19 or would you have discarded this entry?

20 A My recollection is that it was included.

21 Q It was included?

22 A That is my recollection.

23 Q Was there any cut-off line in terms of duration that
24 you used for that analysis?

25 A Yes.

1 Q What was that?

2 A Zero seconds.

3 Q So anything over zero seconds would be included?

4 A That is correct.

5 Q Do you know how those durations were determined?

6 A Are you referring to the durations in column -- in the
7 third column?

8 Q Yes.

9 A Based on my understanding and experience over the years
10 of working with these call logs, the automated system
11 documents the length of connection.

12 Q So it's your understanding that this indication of 11
13 seconds duration indicates that the call was collected
14 for 11 seconds?

15 A Connected, yes.

16 Q What did I say, collected? Connected for 11 seconds.
17 I'm sorry.

18 A That's okay.

19 Q So from the time that whatever recorded this
20 information had an indication that the phone call was
21 answered until the time that it was terminated was 11
22 seconds?

23 A Whether answered or not.

24 Q Well, what starts the duration if it's not answered?

25 A Either a fax machine, an answering machine, or a human

1 being answering the phone.

2 Q So it is answered in some sense? It may not be
3 answered by a human being, but what starts the duration
4 is a pickup on the receiving end?

5 A That's how we treat these type of call logs if other
6 data is not available.

7 Q Do you know whether other data was available for this?

8 A As I said, I requested it, and I was told that it was
9 not available.

10 Q Did you ask for deposition transcripts?

11 A I don't think so.

12 Q And you weren't provided with any of those?

13 A No.

14 Q Do you know what equipment was used to create this data
15 record?

16 A No.

17 (Exhibit 12 marked.)

18 BY MR. SCHLESSINGER:

19 Q Ms. Verkhovskaya, you have in front of you a document
20 that's been marked as Verkhovskaya deposition
21 Exhibit 12. And is it fair to say this is another call
22 record that you used?

23 A Yes.

24 Q There is maybe two-thirds of the way down the page a
25 row that has an entry -- Let me start that question

1 over.

2 About two-thirds of the way down on
3 Verkhovskaya Exhibit No. 12, there's an entry that
4 says "failed."

5 Do you see that?

6 A Yes.

7 Q Do you know how you treated that call or calls that say
8 "failed"?

9 A May I have a copy of my report again?

10 Q You can certainly have this copy.

11 A It was included.

12 Q It was included?

13 A Yes.

14 Q What was your understanding of what was signified by
15 "failed"?

16 A Could be failed sale. It could be I don't have enough
17 understanding but should additional information be
18 provided and I am asked as determined by court or both
19 parties to remove these numbers, that would be an easy
20 fix.

21 MR. SCHLESSINGER: I'm sorry, could you read
22 back the answer.

23 (Answer read.)

24 BY MR. SCHLESSINGER:

25 Q Do you think it was a mistake to include all that says

1 "failed"?

2 A No, I don't.

3 Q So your opinion is that the call that's reflected by
4 that entry on Exhibit No. 12 was a call that should be
5 included in your analysis as a violation of the TCPA,
6 correct?

7 A I don't issue legal opinion as to what is a violation
8 of TCPA. I issue data analysis opinion stating that
9 based on my analysis of the call data, a certain number
10 of records fit the definition of having two calls
11 within a 12-month period after being on the NDNCR for
12 31 days and non-business telephone numbers. That's the
13 scope of my opinion.

14 Q Well -- And this call that's reflected with the word
15 "failed," you're regarding as a call within the
16 parameters that you just described, correct?

17 A That is my recollection that I included these types of
18 calls.

19 Q Is there something in your report that caused you to
20 give the testimony you just gave?

21 A Yes.

22 Q And what is that?

23 A I do not state that I had information to exclude these
24 types of calls and excluded them.

25 Q So, therefore, you conclude that you did not exclude

1 them?

2 A Correct.

3 Q I note that the duration listed for this call is seven
4 seconds.

5 Is that why you included this call?

6 A That is correct.

7 Q So your analysis was done based on the duration column
8 without regard to what it said in the disposition
9 column; is that correct?

10 A For this particular report, yes.

11 Q What about the call below that that says "busy"?

12 A It was treated in the same way.

13 Q And do you have an understanding of what the word
14 "busy" means as used on this document?

15 A As I stated earlier, I asked for these types of
16 information and did not receive it.

17 Q So you didn't reach any conclusion as to what "busy"
18 meant?

19 A Correct.

20 Q And you treated this as a call that would be included
21 in your analysis?

22 A Correct.

23 (Exhibit 13 marked.)

24 BY MR. SCHLESSINGER:

25 Q Ms. Verkhovskaya, you're looking at deposition Exhibit

1 A No.

2 Q And then there's one close to the bottom that says
3 "Agent ERRO."

4 Do you know what that refers to?

5 A Probably agent error, but, no, I don't.

6 Q And do you know whether, for example, that agent error
7 call was included in your analysis?

8 MR. DONOVAN: I'm going to just object and
9 explain only to the extent that because we don't have
10 complete columns here, we don't know if that is even
11 the extent of the disposition. It's kind of hard for
12 her to answer given how unclear the document is.

13 THE WITNESS: It was included.

14 BY MR. SCHLESSINGER:

15 Q And what are you looking at to make that determination?

16 A I looked to make sure that this call log was part of
17 the production records as referenced in my report.

18 Q And you looked at your call mapping which is Exhibit
19 No. 10 to make that determination?

20 A No, in my report. In call mapping, there's a listing
21 of files, and then I compared that listing of files to
22 my report.

23 Q I see. And the part of your report that you looked at
24 is the listing of the call record numbers that you
25 included?

1 A And the listing of the file names, yes.

2 Q So then just to make sure this is clear, the call
3 that's referred to as "Agent ERRO" was included in your
4 analysis?

5 A Correct.

6 Q There's a couple entries up above that that say "Do Not
7 Cal."

8 Do you know whether those were included?

9 A Yes, they were included.

10 Q Do you know what the do not call, if that's what it
11 says, do you know what that refers to?

12 A In this particular file, I do not.

13 (Exhibit 15 marked.)

14 BY MR. SCHLESSINGER:

15 Q Ms. Verkhovskaya, again, Exhibit -- You're looking at
16 Exhibit 15. Again, that appears to be call records,
17 correct?

18 A Correct.

19 Q There's -- In the next to last column, if, in fact,
20 that says "Disposition" for the first row, it looks
21 like that's cut off, but it says "Not Available."

22 Do you know what that refers to?

23 A No.

24 Q Do you know whether that was included in your analysis?

25 A Yes, it was.

1 Q And then the next one down says "Call Back."

2 Do you know what that refers to?

3 A I can make an assumption for all of these, but I don't
4 know what it refers to in this content.

5 Q If it's a reasonable assumption, I'd be interested in
6 what your assumption is.

7 A It would be either the person asked to call back or the
8 agent decided that we should call them back.

9 Q Do you know what you assumed in connection with your
10 analysis?

11 A I don't think it was relevant as long as the calls were
12 connected.

13 Q So you did include this particular call in your
14 analysis?

15 A Yes.

16 Q Then the next one down says "Disconnect," I think.

17 Do you know whether that was included?

18 A It was.

19 Q And do you know what disconnect refers to there?

20 A No, I do not.

21 Q A little bit further down there's one that says
22 "Hung-Up."

23 Do you know what that means?

24 A I can assume that the person hung up.

25 Q And that would have been included in your analysis?

1 A Yes.

2 Q The next one after "Hung-Up," it says "Pitch No," and I
3 don't know what it says after that.

4 Do you know what that says?

5 A Maybe pitch no sale.

6 Q Do you know whether that was included?

7 A Yes, it was.

8 Q There's one all the way down near the bottom that says
9 "Not interested" perhaps.

10 You would have included that one in your
11 analysis?

12 A Correct.

13 (Exhibit 16 marked.)

14 BY MR. SCHLESSINGER:

15 Q Ms. Verkhovskaya, the document in front of you has been
16 marked as Verkhovskaya Exhibit 16, that's more call
17 records, correct?

18 A Correct.

19 Q And the information on here that's different from
20 anything that we looked at before is in the second
21 column over from the right, there's a whole series of
22 names with numbers after them listed.

23 Do you know what that refers to?

24 A No, I do not.

25 Q Did that have any impact on your analysis?

1 A No, it did not.

2 Q I'm sorry to do it this way, but I wanted to ask you
3 about paragraph 29 of your report which says that you
4 can identify names and addresses associated with
5 particular numbers.

6 Do you see where I'm referring to?

7 A Yes.

8 Q How do you go about doing that?

9 A This is an established process that has been used in
10 many cases and approved by many courts and class cert
11 and settlement administration stages of the class
12 action litigations and particularly TCPA where we
13 submit a set of telephone numbers and the timeframe to
14 LexisNexis and then they provide us with name and
15 address associated with that phone number at the time
16 of the calls.

17 Q So when you say here that you can identify the names
18 and addresses associated with the numbers, what you're
19 saying is you rely on LexisNexis to provide you that
20 information and you just use the information LexisNexis
21 provides to you, correct?

22 A Correct.

23 Q You don't do any additional analysis or inputting on
24 that information?

25 A Well, then we use that information as described in my

1 report to submit to national change of address database
2 to get the most up-to-date addresses for these
3 individuals.

4 Q Is it fair to say that telephone numbers are sometimes
5 abandoned by particular users and then given to
6 subsequent users?

7 A Sometimes they are over-assigned.

8 Q Do you know how often that occurs?

9 A It varies from one phone to another.

10 Q This procedure that you employed, with the assistance
11 of your vendors, identified who the -- what name and
12 address were associated with the telephone number at
13 the time the call was made, correct?

14 A Correct.

15 Q And then you ran that through a change of address
16 database to see whether the address had changed,
17 correct?

18 A Correct.

19 Q Did you do anything to see whether the person using the
20 telephone number currently is the same person who was
21 using the telephone number at the time the call was
22 made?

23 A It's not part of our standard process but if asked, we
24 can do that as well.

25 Q Have you done that in this case?

1 A No.

2 Q And so you won't be expressing any opinion on that
3 subject at trial?

4 A Correct.

5 Q The -- That same paragraph of your opinion refers to
6 the name and address of the user/subscriber.

7 Is the user and subscriber the same thing
8 in your mind?

9 MR. DONOVAN: Object to the form.

10 THE WITNESS: Subscriber and user is. User
11 and subscriber sometimes may or may not be.

12 BY MR. SCHLESSINGER:

13 Q And what do you mean by that?

14 A Subscriber is more likely not as always a user.

15 Q So the subscriber is the name of the person in whose
16 name that telephone number is held?

17 A Correct.

18 Q And that's according to whatever service assigns that
19 number?

20 A Correct.

21 Q But then somebody else might be using that phone --

22 A Correct.

23 Q -- that's not the subscriber?

24 A (Nods.)

25 Q So when you're -- In that circumstance where the user

1 of the phone is not the same as the subscriber, which
2 did you use for your analysis, the user or the
3 subscriber or both?

4 A I would like to clarify paragraph 29.

5 Q Thank you.

6 A It states "I can" which means I did not do that in this
7 case yet, but I can identify both.

8 Q But you haven't done that yet?

9 A Correct.

10 Q Is it your intention to do that?

11 A I have not been asked to do that.

12 Q If you were to do that, how would you identify first
13 the subscriber?

14 A Through the process that I described in my report, by
15 working with LexisNexis and relying on their data.

16 Q You'd use the same process, just change the date?

17 A No. I ask the process to -- I use the process to
18 identify the subscriber which I describe here.

19 Q Okay. And that would be to identify the subscriber at
20 the time the call was made?

21 A That is correct.

22 Q And would you use that same process to identify the
23 user at the time the call was made?

24 A Yes. I would communicate to LexisNexis that I would
25 need them to return all users associated with that

1 telephone number.

2 Q Do you have an understanding of how LexisNexis
3 determines who the user is of a phone number as
4 contrasted with the subscriber?

5 A The subscriber is an individual registered with the
6 phone company as an individual authorized to make
7 financial changes and making payments.

8 The user is an individual that associates
9 himself with the telephone number. For example, a
10 kid goes to college and he fills out a Starbucks --
11 Starbucks frequent visitor card and puts his phone
12 number down, that would be an identification of a
13 user of a certain phone number.

14 Q And if LexisNexis has information indicating -- For
15 example, I'm the subscriber and my daughter goes to
16 college and takes the phone that I'm the subscriber for
17 with her and goes to Starbucks, which name would
18 LexisNexis provide if you asked them to do the
19 analysis? Would they provide both my name and my
20 daughter's name?

21 A As users?

22 Q As user and subscriber or as user.

23 A Both. Both as users.

24 Q So the information that you get from LexisNexis
25 provides multiple names associated with particular

1 phone numbers?

2 A Correct.

3 Q Do you make any assumptions about which name is the
4 right one to use?

5 A No. If we ask to do it that way, all names are used.

6 Q But, again, in this case you haven't done that?

7 A Correct.

8 Q Do you know what CLS records are? It's this reference
9 in paragraph 13 of your report.

10 A (Witness peruses document.) I believe those are
11 consent records that were provided to me by class
12 counsel.

13 Q And by consent records you mean records where the
14 recipient of the call had given consent to receive a
15 call?

16 A Correct.

17 Q And what use did you make of those?

18 A I removed all of them.

19 Q Do you know, Ms. Verkhovskaya, if the FCC takes a
20 position on what constitutes government numbers?

21 MR. DONOVAN: Object to the form.

22 THE WITNESS: I'm not sure I understand your
23 question.

24 BY MR. SCHLESSINGER:

25 Q Well, part of what your opinion includes is separating